

SHELL OIL CO.

IBLA 77-552

Decided May 23, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dated August 3, 1977, rejecting coal lease application W-59483.

Set aside and remanded.

1. Coal Leases and Permits: Applications

Applications for short-term coal leases may be accepted only where it is shown that such coal is needed to maintain an existing operation or that such coal is needed as a reserve for production in the near future under the provisions of 43 CFR 3525.3-1.

APPEARANCES: Thomas G. Johnson, Esq., Houston, Texas, for appellant;  
Kenneth G. Lee, Esq., Office of the Solicitor, U.S. Department of the Interior, for appellee.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Shell Oil Co. appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 3, 1977, rejecting its application for a short-term coal lease W-59483. Shell seeks to acquire the lease in question, covering some 320 acres 1/ immediately adjacent to a 600-acre Federal lease, tract W-0325878, known as the Buckskin Mine, which is presently leased to Shell for purposes of coal extraction for a primary term ending October 31, 1987. Shell seeks to acquire lease rights to the 320-acre tract in order to dilute certain fixed costs involved in opening a mine on the 600-acre tract. This saving would be accomplished by spreading these expenses over the larger volume of coal which could be recovered in connection with the Buckskin site if the adjacent 320-acre tract was also leased to Shell.

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1/ S 1/2 S 1/2, sec. 29, and N 1/2 N 1/2, sec. 32, T. 52 N., R. 72 W., sixth principal meridian, Campbell County, Wyoming.

On May 14, 1976, Shell filed with BLM an application for an expansion of its coal lease W-0325878, supra, to include the additional 320-acre tract. The record before us contains extensive supporting data filed by Shell in connection with this application, which was rejected March 21, 1977, due to the fact that the Federal Coal Leasing Amendments Act of 1975, enacted August 4, 1976, limits such modification to 160 acres whereas the additional tract requested was 320 acres.

According to appellant's Statement of Reasons, Shell officials met with BLM personnel in Cheyenne, Wyoming, on June 3, 1976, to discuss the above-described request for expansion of lease W-0325878. At this time, BLM suggested that Shell request that the 320-acre tract in question be offered for competitive leasing under the short-term leasing regulations, 43 CFR 3525.3. 2/ Shell responded by submitting a short-term lease application dated July 17, 1976. No action was taken on this application until March 21, 1977, when, as noted above, Shell's application for a lease modification was rejected. This decision also rejected the short-term lease application and advised Shell that the latter application should be resubmitted with a new filing fee and be assigned a new serial number.

On May 11, 1977, Shell resubmitted its application for a short-term lease, making reference to its prior applications and to the supporting documents and plans filed in connection with those applications. Appellant, in Appendix E of its Statement of Reasons, enclosed a copy of the mining plan for the existing 600-acre lease, which indicates that actual coal mining operations would begin on the 320-acre tract within the second year of the short-term lease which it sought for that latter parcel. This application was rejected by decision of August 3, 1977, for the stated reason that:

Information submitted in support of your competitive coal lease application states that you plan to have the proposed Buckskin Mine in operation and be ready for coal sales in mid-1980. Maps depicting the yearly mining sequence of the proposed Buckskin Mine show that mining activity and coal production from the area under coal lease application are not proposed until at least 14 years after mining commences. Inasmuch as you do not meet either of the requirements outlined above, your application for a competitive coal lease is hereby rejected.

[1] The regulation, 43 CFR 3525.3-1, setting conditions necessary for acceptance of applications for short-term coal leases under

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2/ See Federal Coal Leasing Policies and Regulations, Publication No. 95-77, 95th Cong., 2nd Sess. (1978), p. 60 et seq.

the Federal Coal Leasing Amendments Act of 1975 states in relevant part, that, "Applications for coal leases will be accepted only if the applicant shows that, (a) the coal is needed to maintain an existing mining operation, or (b) the coal is needed as a reserve for production in the near future." The decision below states that, "the near future specifically means that operation of the mine must be scheduled to commence within three years and delivery of the coal must be expected to commence in five years." <sup>3/</sup> It is clear from the documents which Shell has filed with BLM in support of its 320-acre, short-term lease application that the proposed lease production schedule meets or exceeds the requirements of 43 CFR 3525.3-1, supra. We are thus left to assume that the decision below was based on a misreading of Shell's lease application or on some other inadvertent administrative error. <sup>4/</sup>

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for further consideration of appellant's lease application.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

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<sup>3/</sup> See BLM Instruction Memorandum No. 73-231, June 6, 1973; see also appendix to Federal Defendants Memorandum in National Resource Defense Council, et al. v. Royston Hughes, et al., Civil Action No. 75-1749, D.D.C. (1977).

<sup>4/</sup> The Solicitor, by appearance dated March 21, 1978, has likewise moved that this case be remanded to BLM for further consideration.

